

Elliot Gale (Bar #263326)
egale@gajplaw.com
Joe Angelo (Bar #268542)
jangelo@gajplaw.com
Gale, Angelo, Johnson, & Pruett, P.C.
1430 Blue Oaks Blvd., Ste. 250
Roseville, CA 95747
916-290-7778 ph
916-721-2767 fax

Attorneys for Plaintiff
Emily Tablit

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

CASE NO. 2:20-cv-0

Emily Tablit

Plaintiff,

v.

Capital One Bank (USA), N.A.,

Defendants.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Emily Tablit, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

1 2. Plaintiff brings this action against Defendant Capital One Bank (USA), N.A. (hereinafter
2 “Defendant” or “Capital One”) for its abusive and outrageous conduct in connection with debt
3 collection activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following findings
5 and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are
7 dependent upon the collection of just and owing debts. Unfair or deceptive
8 collection practices undermine the public confidence which is essential to the
9 continued functioning of the banking and credit system and sound extensions of
10 credit to consumers.

11 (2) There is need to ensure that debt collectors and debtors exercise their
12 responsibilities to another with fairness and honesty and due regard or the rights of
13 the other.

14 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair
15 or deceptive acts of practices in the collection of consumer debts and to require
16 debtors to act fairly in entering into and honoring such debts, as specified in this
17 title.

18 4. While many violations are described below with specificity, this Complaint alleges
19 violations of the statutes cited in their entirety.

20 5. The TCPA was designed to prevent calls like the ones described herein, and to protect the
21 privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers
22 a choice as to how corporate entities may contact them and to prevent the nuisance associated with
23 automated or prerecorded calls.

24 **JURISDICTION & VENUE**

25 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
26 227.

27 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

28 **GENERAL ALLEGATIONS**

8. Plaintiff Emily Tablit (hereinafter “Plaintiff”) is an individual residing in the state of
California and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

1 9. At all relevant times herein, Capital One was a company engaged, by the use of mail,
2 email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt,” as
3 defined by Cal. Civ. Code §1788.2(f).

4 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
5 Civ. Code §1788.2(c)

6 11. Plaintiff opened an unsecured credit account with Defendant in 2013.

7 12. The account Plaintiff opened with Defendant was primarily for personal, family or
8 household purposes and is therefore a “debt” as that term is defined by the Calif. Civil Code §
9 1788.2(d) of the Rosenthal Act.

10 13. Defendant has been attempting to collect on a debt that originated from monetary credit
11 that was extended primarily for personal, family, or household purposes, and was therefore a
12 “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3) of the Rosenthal
13 Act.

14 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant arising
15 from what Plaintiff is informed and believes was a consumer credit transaction, the money
16 allegedly owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f)
17 of the Rosenthal Act.

18 15. Plaintiff is informed and believes that Defendant is one who regularly collects or attempts
19 to collect debts on behalf of themselves, and is therefore a “debt collector” within the meaning of
20 the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection”
21 within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal Act, and is also
22 therefore a “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal
23 Act.

24 16. Plaintiff’s account was an unsecured credit card.

25 17. Plaintiff began making payments on the account shortly after it was opened and charges
26 were made on the account.

27 18. Plaintiff was making payments on the account for several years before she became
28 financially unable to keep up with the monthly payments.

1 19. Defendant began contacting Plaintiff in approximately January of 2020 to inquire about
2 the status of the account and to collect on the payments that were no longer being made.

3 20. Plaintiff retained counsel to assist in dealing with Defendant's debt and to seek some type
4 of financial relief.

5 21. Counsel for Plaintiff sent Defendant a letter confirming representation of Plaintiff and
6 informing Defendant that it was to no longer contact Plaintiff directly and that all
7 calls/letters/collection efforts were to no longer be directed at Plaintiff.

8 22. The content of the letter also informed Defendant that Plaintiff was withdrawing her
9 consent to be contacted on her cellular telephone.

10 23. Counsel for Plaintiff sent the letter of representation to Defendant on or about January 10,
11 2020, via certified mail.

12 24. Defendant received the certified letter on January 13, 2020.

13 25. Plaintiff informed Defendant that she was revoking her consent to be called on her
14 telephone in mid-January of 2020.

15 26. Defendant continued to contact Plaintiff between approximately January 16 – March 9,
16 2020; the type of contact was through phone calls to Plaintiff's cellular telephone.

17 27. Defendant would sometimes call Plaintiff numerous times each day demanding payment
18 on the account.

19 28. Defendant would use an automatic dialing machine when placing the calls to Plaintiff.

20 29. Plaintiff was contacted repeatedly regarding non-payment of the debt owed to Defendant
21 despite Defendant being notified that Plaintiff had retained counsel to deal specifically with the
22 debt owed to Defendant and that Plaintiff revoked consent to be contacted on her cellular
23 telephone.

24 30. Defendant's calls were frequent in nature and continued despite receiving written
25 confirmation that Plaintiff was represented by an attorney and that all calls to Plaintiff's cellular
26 telephone were to stop.

31. Despite receiving written notice regarding Plaintiff's representation by counsel and revocation of her consent to be contacted on her cellular telephone Defendant continued to call and contact Plaintiff daily regarding her account with Defendant.

FIRST CAUSE OF ACTION

(Violation of the Rosenthal Act)
(Cal. Civ. Code §§ 1788-1788.32)

(Against Defendant Capital One Bank (USA) N.A.)

32. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

33. Plaintiff provided written notice that she was represented by sending Defendant a letter with the name, address, and contact information of her attorney and informed Defendant that she was represented.

34. Defendant continued to call and attempt to make contact with Plaintiff despite receiving notice of representation and being informed that Plaintiff had retained counsel in an effort to deal with the debt that was owed to Defendant.

35. The calls and communications made by Defendant to Plaintiff were not related to statements of Plaintiff's account and were attempts to collect a debt.

36. Plaintiff received numerous calls from Defendant after Defendant was informed of Plaintiff's representation by counsel.

37. Defendant received a certified letter from Plaintiff's counsel on January 13, 2020.

38. Defendant contacted Plaintiff at least 65 (sixty-five) separate times after being informed that Plaintiff retained an attorney and was informed of the representation.

39. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving notice that Plaintiff had retained an attorney.

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SECOND CAUSE OF ACTION

(Violation of the Rosenthal Act)
(Cal. Civ. Code §§ 1788-1788.32)
(Against Defendant Capital One)

40. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

41. Defendant placed over 65 calls to Plaintiff in a five-week period.

42. Plaintiff was contacted multiple times per day by Defendant.

43. Defendant violated Cal. Civ. Code §1788.11 by calling Plaintiff over 65 times in a deliberate attempt to call Plaintiff repeatedly as well as to harass and annoy Plaintiff.

THIRD CAUSE OF ACTION

(Violation of the TCPA)
(47 USC § 227)
(Against Defendant Capital One Bank (USA), N.A.)

44. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

45. Since at least early January of 2020 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

46. Defendant was informed that Plaintiff revoked her consent to be contacted by Defendant in mid-January 2020.

47. Defendant called Plaintiff numerous times since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

48. Defendant would contact Plaintiff nearly daily regarding payment on the accounts.

49. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

50. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

51. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

52. Plaintiff expressly revoked any consent that may have previously been given to Defendant to be contacted by an automatic dialing machine in January of 2020.

53. Plaintiff was contacted at least 65 (sixty-five) times by Defendant on her cellular phone.

54. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(A)(iii).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies provided for in any other cause of action pursuant to California Civil Code §1788.32.
- b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and
- c. An award of costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code §1788.30(c).
- d. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

Gale, Angelo, Johnson, & Pruett, P.C.

Dated: June 29, 2020

By: /s/ Joe Angelo

Joe Angelo

Elliot Gale

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

Gale, Angelo, Johnson, & Pruett, P.C.

Dated: June 29, 2020

/s/ Joe Angelo

Joe Angelo

Elliot Gale

Attorneys for Plaintiff